

Should Mediation Be Mandatory For Divorcing Couples?

Increasingly, divorce mediation is becoming mandatory before couples can take their divorce to the courts. More and more court systems are implementing this requirement as they see an increase in couples using the courts as negotiating forums or simply as launching pads for attacks and grudge resolution. Mediation is seen as a way for couples to get this 'out of their system' at minimum and possibly resolve such differences without having to tie up the court system at all.

As more and more courts take this step, the obvious question is, should this be mandatory for *all* divorcing couples?

On the one hand, divorce mediation, when pursued, has a 90% success rate in mutual settlement agreements that keep everyone out of court. This means much lower costs for both parties, a much faster resolution, and often a non-adversarial atmosphere between spouses. When approached in an objective, positive manner, divorce mediation can help to identify the needs and concerns of each spouse, and then guide the couple towards solutions that are mutually acceptable and beneficial.

Even if court proceedings prove inevitable, divorce mediation can help each party to understand the different types of divorce proceedings and identify which is the best for all concerned – themselves, their offspring (if any), and other relations or friends. Being able to understand their needs and the process as a whole can bring increased focus and speed to the actual court proceedings.

On the other hand, some worry that in divorce cases where one spouse has superiority over the other (financial or otherwise) or where problems are simply overwhelming, the mediator may not be qualified or able to truly bring the discussion down to a reasonable level or offer true solutions outside of legal rulings. The worry is that divorce mediation in these cases may create a false sense that a solution is guaranteed and their failure may make court proceedings even more difficult and divisive.

Naturally, lawyers are dubious about the possible success of mediation over more adversarial divorce approaches, especially when complex financial, property or custody issues are at hand. But divorce mediation agreements are always vetted and advised on by attorneys for both parties. Often the spouses themselves are the best qualified to know what they must have as opposed to what they merely want, as well as the best interests of children or other parties.

In the end, the success or failure of divorce mediation depends greatly on the spirit and attitude the people involved bring to it. Couples forced via court order to engage in mediation may not make a good-faith effort to listen and respond honestly and objectively, thus hurting mediation's chances of success. In these cases, mandatory divorce mediation would be a failure before it even begins.